

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Petition of AT&T Services, Inc. For
Forbearance Under 47 U.S.C. § 160(c) From
Enforcement of Certain Rules for Switched
Access Services and Toll Free Database Dip
Charges**

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) **WC Docket No. 16-363**
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**JAMES VALLEY COOPERATIVE TELEPHONE COMPANY, NORTHERN VALLEY
COMMUNICATIONS, LLC AND GREAT LAKES COMMUNICATION
CORPORATION'S JOINT MOTION FOR SUMMARY DENIAL OF
AND OPPOSITION TO PETITION OF
AT&T SERVICES, INC. FOR FORBEARANCE
PURSUANT TO 47 U.S.C. § 160(c)**

December 2, 2016

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Pursuant to 47 C.F.R. §§ 1.55 and 1.56 and the Commission's Public Notice,¹ James Valley Cooperative Telephone Company, Northern Valley Communications, LLC, and Great Lakes Communication Corporation,² by counsel, respectfully submit this Joint Motion for Summary Denial of and Opposition to Petition of AT&T Services, Inc. for Forbearance Pursuant to 47 U.S.C. § 160(c).

SUMMARY

AT&T's Petition³ requests that the Commission forbear from enforcing any rules that would require or permit carriers to collect tariffed tandem switching and transport services on calls to or from LECs that have met the definition of access stimulation in the Commission's rules. AT&T's Petition seeks to extend this detariffing requirement to all carriers, including CLECs, price cap ILECs, and rate-of-return regulated carriers, including Centralized Equal Access ("CEA") providers. As explained below, however, AT&T's Petition should be summarily denied because AT&T lacks standing to seek such relief with regard to CEA Providers and CLECs, because it is not part of that class of carriers, and AT&T's Petition should also be summarily denied because it was not complete as filed. Even if the Commission reaches

¹ Public Notice, *Pleading Cycle Established for Comments on AT&T's Petition for Forbearance from Certain Tariffing Rules*, WC Docket No. 16-363, DA 16-1239 (Rel. Nov. 2, 2016).

² James Valley Cooperative Telephone Company is a founding member of, and partial owner of, South Dakota Network, LLC, which provides Centralized Equal Access services in South Dakota. Northern Valley Communications, LLC is a competitive local exchange company that is wholly-owned by James Valley Cooperative Telephone Company and, as such, is an affiliate member of South Dakota Network, LLC. Northern Valley serves high-volume conferencing calling customers and has adjusted its rates as required by the Commission's rules governing access stimulation. Great Lakes Communication Corporation is a competitive local exchange carrier that exchanges traffic with long-distance carriers through the centralized equal access services of Aureon, formerly known as Iowa Network Services, Inc. Great Lakes serves high-volume conferencing calling customers and has adjusted its rates as required by the Commission's rules governing access stimulation.

³ Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 16-363 (filed Sept. 30, 2016).

the merits of AT&T's Petition, it should decline to grant the requested relief as to rate-of-return regulated CEA providers and CLECs.

I. AT&T LACKS STANDING TO SEEK THE RELIEF REQUESTED BY THE PETITION

AT&T's Petition should be summarily denied with regard to its request to detariff the tandem switching and transport services of CEA providers and CLECs. AT&T is not part of either class of carriers. As a result, AT&T lacks standing to seek forbearance with regard to the Act and the Commission's rules and regulations applicable to CLECs and CEA providers.

47 U.S.C. § 160(c) provides that “[a]ny *telecommunications carrier*, or class of telecommunications carriers, may submit a petition” seeking to end the Commission's enforcement of rules “with respect to *that carrier* or those carriers, or any service offered by *that carrier* or carriers.” Section 160(c) therefore incorporates a standing requirement that limits the ability of carriers to seek forbearance from rules or regulations that do not apply to *that* carrier or for services that the carrier does not “offer[].”⁴

AT&T's Petition fails to establish that AT&T seeks to eliminate any rule that relates to the services that AT&T actually provides. While AT&T indicates that some of its affiliates “operate as local exchanges carriers that bill for some of the access services discussed in the Petition,”⁵ there is no evidence that AT&T provides tandem switching and transport for calls to or from any carrier engaged in access stimulation. Therefore, it is likely that the Petition is not intended to free those AT&T affiliates from burdensome regulation, but rather is intended to

⁴ See, e.g., *In re Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. 160(c) from Enforcement of Obsolete ILEC Legacy Regulations that Inhibit Deployment of Next-Generation Networks*, 31 FCC Rcd. 6157, n.7 (2015) (emphasis added) (concluding that USTelecom had “standing to request forbearance under section 10” because it was acting on behalf of a class of carriers that were members of the association).

⁵ Petition at n.1

benefit AT&T Corp., “the entity that is billed and that [sometimes] pays the charges for the access services discussed in this Petition.”⁶

AT&T Corp., as an entity that purchases access services, but does not provide them, has no standing to seek forbearance. The Commission has determined that when a long-distance carrier purchases access services the Commission will treat it purely as a customer, not as a carrier.⁷ According to Commission precedent, “the provisions of the Act and [the Commission’s] rules regarding access charges apply only to the provider of the service, ***not to the customer.*** . . .”⁸ Here, AT&T seeks forbearance in its capacity as a customer of access services on calls related to access stimulation, rather than as a carrier. But the Act only permits a “telecommunications carrier” to seek forbearance of rules applicable to it.⁹ Accordingly, AT&T lacks standing to seek forbearance on the access services that are the subject of its Petition. For this reason, AT&T’s Petition should be denied.

Even if the Commission concludes that AT&T does not lack standing with regard to all of the relief it requests, it should nevertheless conclude that AT&T lacks standing insofar as it seeks forbearance for the tandem switching and transport services associated with CEA providers

⁶ *Id.* Alteration added to highlight the fact that AT&T often engages in self-help withholding instead of paying access charges and that AT&T’s Petition fails to supply any data that would enable the Commission to verify with AT&T’s representation that it actually pays for tariffed tandem switching and transport for calls terminating to LECs that have complied with the FCC’s existing access stimulation rules. Indeed, AT&T is currently defending multiple federal court cases that seek to end its non-payment of tariffed access charges for access stimulation traffic. *See, e.g., Northern Valley Communications, LLC v. AT&T Corp.*, Civ. 14-1018-RAL (D.S.D.); *Great Lakes Communication Corp. v. AT&T*, 5:13-cv-4117 (N.D. Iowa), *on referral AT&T Corp. v. Great Lakes Communication Corp.*, EB-16-MD-001; *Iowa Network Services, Inc. v. AT&T Corp.*, *Iowa Network Services, Inc. v. AT&T Corp.*, 3:14-cv-03439-PGS (D.N.J.) (stayed and referred to the Commission).

⁷ *In re All Am. Tel. Co., E-Pinnacle Commc'ns, Inc., & Chasecom, Complainants*, 26 FCC Rcd. 723, ¶ 10 (2011).

⁸ *Id.* ¶ 18 (emphasis added).

⁹ *See* 47 U.S.C. § 160(c).

and CLECs. AT&T is not a Commission-sanctioned CEA provider nor is it a CLEC and, therefore, insofar as AT&T's Petition extends to these classes of telecommunications carriers that AT&T is not part of, AT&T lacks standing to seek the relief it requests. CEA providers, which serve some of the nation's most rural states, merit careful consideration by the Commission in evaluating AT&T's Petition. The unique status of CEA providers is reflected in the Commission's orders authorizing their creation,¹⁰ and in the unique rules that govern their duty to provide direct trunk transport services.¹¹ Moreover, even though the Commission decided earlier this year to eliminate the dominant carrier status for ILECs that provide switched access services, it nevertheless determined that CEA providers remain dominant carriers subject to the strictest rate regulation.¹² Because AT&T is not among this special class of carriers, it lacks standing to seek forbearance of the rules that apply to them. For these reasons, AT&T's Petition should be summarily denied.

¹⁰ See, e.g., *In Re the Application of SDCEA, Inc. to Lease Transmission Facilities to Provide Centralized Equal Access Serv. to Interexchange Carriers in the State of S. Dakota.*, 5 FCC Rcd. 6978 (1990); Memorandum Opinion, Order and Certificate (Indiana Switch Access Division), Mimeo No. 3652, released April 10, 1986, File No. W-P-C-5671 at ¶ 23, *aff'd on recon.*, 1 FCC Rcd. 634 (1986); Memorandum Opinion, Order and Certificate (Iowa Network Access Division) 3 FCC Rcd. 1468 (Common Carrier Bureau 1988), *aff'd on recon.*, 4 FCC Rcd. 2201 (Common Carrier Bureau 1989); Memorandum Opinion, Order and Certificate (Contel of Indiana, Inc.) 3 FCC Rcd. 4298 (Common Carrier Bureau 1988).

¹¹ 47 C.F.R. § 69.112(i) (providing that Centralized equal access providers are not required to provide direct-trunked transport service).

¹² See *In re Technology Transitions: USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd. 8283, FCC 16-90, at n.43 (rel. July 15, 2016) ("non-dominant status does not extent to centralized equal access providers because such carriers do not provide service to end users").

II. AT&T'S PETITION WAS NOT COMPLETE AS FILED

AT&T's Petition should also be summarily denied because it was not complete as filed.

The Commission's orders clearly require petitions for forbearance to be "complete as filed."¹³ To meet this requirement, a petition must:

state explicitly the scope of the relief requested; to address each prong of the statute as it applies to the rules or provisions from which the petitioner seeks relief; [] identify any other proceedings pending before the Commission where the petitioner speaks to the relevant issues (or declare not to have spoken to the issue, if that is the case); and [] comply with simple format requirements intended to facilitate [the Commission's] and the public's review of the petition.¹⁴

As explained more fully below, AT&T's Petition fails to meet these requirements and should therefore be dismissed.

A. AT&T'S PETITION FAILS TO ESTABLISH THE SCOPE OF THE REQUESTED RELIEF WITH THE REQUISITE PARTICULARITY

In order to be complete as filed, a petition must "identify clearly . . . the scope of the requested relief" and state "the following with specificity:"

(1) each statutory provision, rule, or requirement from which forbearance is sought; (2) each carrier, or group of carriers, for which forbearance is sought; (3) each service for which forbearance is sought; (4) the geographic location, zone, or area in which forbearance is sought; and (5) any other factor, condition, or limitation relevant to determining the scope of the requested relief.¹⁵

AT&T's Petition fails to meet these requirements in multiple respects. First, it does not state "with specificity" the particular provisions, rules, or requirements from which forbearance

¹³ See *In re Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, As Amended*, Report and Order, 24 FCC Rcd. 9543, 9549-54 ¶¶ 11-19 (2009) ("*Forbearance Petition Procedural Order*"); 47 C.F.R. § 1.54 (forbearance petitions must be complete as filed); *In re Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19445, ¶ 61 n.161 (2005) (in the case of section 10(c) petitions for forbearance the Commission is "under no statutory obligation to evaluate [a] Petition other than as pled").

¹⁴ *Forbearance Petition Procedural Order*, ¶ 11.

¹⁵ *Id.* ¶ 16.

is sought. Rather, it states broad categories of rules that AT&T seeks to be subject to forbearance (Section 203 of the Act, Parts 61, 69, and Subpart J of Part 51 of the Commission's rules) "to the extent that" the particular rule allows or requires the tariffing of tandem switching and transport services on calls "to or from local exchange carriers engaged in access stimulation."¹⁶ This broad-brush approach is particularly problematic when applied to Subpart J of Part 51 of the Commission's rules, which provides not only for implementation of the FCC's *Connect America Fund Order* rate reductions for end office access services, but also provides for revenue recoveries for rate-of-return and price cap carriers.¹⁷ The Petition fails to articulate whether the access recovery mechanisms provided in Subpart J of Part 51 of the Commission's rules are part of the forbearance request or, instead, whether a carrier whose Interstate Switched Access Revenue Requirement included significant traffic volumes for traffic going to a LEC engaged in access stimulation will be able to adjust its revenue requirement to make up for the reduction in revenues that would result if AT&T's forbearance petition is granted.

The petition is also flawed because it fails to identify "each service for which forbearance is sought." Instead, it attempts to define a new service: "tandem-switching and transport charges on calls to or from local exchange carriers engaged in access stimulation."¹⁸ No such service exists in any of the Commission's rules or orders; whether calls are being terminated to high-volume service providers or traditional residences and businesses, the tandem switching and transport services are indistinguishable. Therefore, the Petition fails to identify a service for which forbearance is sought and, instead, seeks to create a new category of service that has never been previously recognized by the Commission.

¹⁶ Petition at Appendix A.

¹⁷ See 47 C.F.R. §§ 51.915, 51.917.

¹⁸ Petition at Appendix A.

For these reasons, AT&T's Petition failed to identify the scope of the requested relief with significant specificity and should be denied for being incomplete as filed.

B. AT&T'S PETITION DOES NOT ESTABLISH A *PRIMA FACIE* CASE FOR DETARIFFING TANDEM SWITCHING AND TRANSPORT FOR RATE-OF-RETURN REGULATED CEA PROVIDERS

In order for a forbearance petition to be complete as filed, a petitioner "must include in the petition the facts, information, data, and arguments on which the petitioner intends to rely to make the *prima facie* case for forbearance."¹⁹ A *prima facie* showing requires the petitioner to show that:

(1) enforcement of the provision or regulation is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the provision is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. In determining whether forbearance is consistent with the public interest, the Commission also must consider "whether forbearance from enforcing the provision or regulation will promote competitive market conditions."²⁰

The Petition fails to make a *prima facie* showing with regard to any of the required factors for detariffing of CEA's tandem switching and transport services on access stimulation traffic.

First, AT&T has not shown that forbearance from the tariffing of tandem switching and transport for access stimulation traffic is no longer necessary to ensure just and reasonable rates and to prevent unjust and unreasonable discrimination. AT&T erroneously relies on the Commission's prior conclusion that when a LEC experiences a "significant increase[] in switched access traffic," without a corresponding drop in access rates, it can result in "inflated profits that almost uniformly make the LEC's interstate switched access rates *unjust and*

¹⁹ *Forbearance Petition Procedural Order*, ¶ 17.

²⁰ *Id.* at ¶ 2 (quoting 47 U.S.C. § 160(a) & (b)).

reasonable.”²¹ This conclusion does not hold true, however, for rate-of-return carriers where the increased traffic volumes are already factored into the carrier’s rate formation.²² Indeed, for rate-of-return carriers, such as CEA providers, whose rates are based on projected traffic volumes and costs, access stimulation produces no “inflated profits.” To the contrary, when rate-of-return carriers incorporate higher traffic volumes in their rate formation, those higher volumes have the positive effect of *reducing* their tariffed rate for tandem switching and/or transport. Thus, access stimulation by LECs serving rural areas and interconnected with a CEA provider produce a net reduction in rates for the CEA providers when the IXCs pay the tariffed rates for access stimulation traffic.

AT&T’s proposal will foster an environment of unjust and unreasonable discrimination. AT&T’s proposal calls for the Commission to adopt a blatant policy of discrimination against access stimulation traffic, even though there is no technical distinction in the tandem switching and transport services that are required to carry this traffic. AT&T, well known for its abusive self-help, has again resorted to withholding in order to exercise its significant market power over several of the CEA providers serving rural America. AT&T’s withholding creates a situation in which other long distance carriers carry AT&T’s weight because they pay the bill for the CEA’s services while AT&T refuses. Detariffing will also give AT&T disparate bargaining power as AT&T is not proposing that detariffing be replaced with any mandate for it to pay for the tandem switching and transport services that it will continue to receive. Finally, AT&T’s proposal will foster discrimination because it extends to all traffic to or from any “local exchange carrier

²¹ Petition at 16 (citing *Connect America Fund Order*, ¶ 657) (emphasis in Petition).

²² See, e.g., *Connect America Fund Order*, ¶ 684 (requiring rate of return carriers who have access stimulation traffic to file a revised tariff within 45 days based on projected costs and demand “unless the costs and demand arising from the new revenue sharing arrangement had been reflected in its most recent tariff filing.”).

engaged in access stimulation,” not purely on the access stimulation traffic delivered to the LEC. Thus, AT&T’s proposal would permit it to essentially take free tandem switching and transport on *all* traffic going to or from a LEC, including the traditional residential and business customer traffic going to the LEC. AT&T’s Petition fails to explain how its proposal would not foster discriminatory treatment. For this reason, AT&T has failed to make a *prima facie* showing with regard to the first prong of 47 U.S.C. § 160(c).

Second, AT&T fails to make a *prima facie* showing that its proposal will not result in harm to consumers. Under AT&T’s proposal, rural CEA providers would be required to continue transmitting the traffic that AT&T’s customers send to high-volume conferencing and chat services,²³ yet AT&T would have no corresponding obligation to compensate the CEA provider for the costs that it imposes on the CEA providers and, since they serve no end users, the CEA providers would have no clear way to recoup those lost revenues. The result would either be to shift those costs to other long distance traffic through an increase in CEA rates, or a need for the Commission to adjust its revenue recovery formulas to make up for the lost revenue. In the end, however, the only party likely to benefit from AT&T’s forbearance petition is AT&T itself, as there is no indication that AT&T’s cost reductions would result in any savings for AT&T’s customers. Moreover, if the CEA providers are not provided with an opportunity to recoup the lost revenues that would result from AT&T’s proposal, the potential exists that service to consumers would become disrupted or degraded as a result. Accordingly, AT&T’s self-serving proposal fails to make a *prima facie* showing that consumers will not be harmed by detariffing.

²³ See *In re Establishing Just & Reasonable Rates for Local Exchange Carriers*, 22 FCC Rcd. 11629 (2007).

AT&T has failed to establish that its requested forbearance would be in the public interest because it has not demonstrated that forbearance will “promote competitive market conditions.”²⁴ AT&T’s entire discussion of competition is to point out that competitive tandem providers exist in some markets.²⁵ The existence of competitive tandem providers, however, does not mean that detariffing would promote competitive market conditions. Indeed, because the Commission’s existing orders require traffic to flow through CEA providers in many instances,²⁶ and because there is no Commission rule that would require any LEC to interconnect with a competitive tandem switching provider, there can be no reasonable expectation that detariffing tandem switching and transport for access stimulation traffic will result in any increased competition. To the contrary, as noted above, because the CEA providers would be required to continue carrying AT&T’s traffic, but AT&T would have no incentive to agree to pay a reasonable rate for the traffic, the forbearance requested by AT&T would impose hardships on CEA providers while doing nothing to promote competitive market conditions.

C. AT&T’S PETITION FAILS TO IDENTIFY RELEVANT PROCEEDINGS

AT&T’s Petition is also not complete as filed because AT&T failed to “identify any proceeding pending before the Commission in which the petitioner has requested, or otherwise taken a position regarding, relief that is identical to, or comparable to, the relief sought in the forbearance petition.”²⁷

²⁴ *Forbearance Petition Procedural Order*, ¶ 2 (quoting 47 U.S.C. § 160(a) & (b)).

²⁵ See Petition at 7.

²⁶ See, e.g., *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission’s Rules and Regulations*, 3 FCC Rcd. 1468, 1473, ¶ 33 (1988), *aff’d on recon.*, 4 FCC Rcd. 2201, 2201 ¶ 2. (1989).

²⁷ *Forbearance Petition Procedural Order*, ¶ 18.

While AT&T mentions some of the other relevant proceedings in passing, it fails to directly acknowledge that it has already sought, and been denied, the relief it requests through the Petition. First, AT&T previously asked the Commission to prevent the collection of tariffed access charges on traffic terminating to access stimulating LECs, and the Commission rejected AT&T's request in the *Connect America Fund Order*.²⁸

AT&T should have also disclosed that it is party to a proceeding before the Enforcement Bureau that implicates the relief requested through the forbearance petition. In *AT&T Corp. v. Great Lakes Communication Corp.*, EB-16-MD-001, AT&T argues that Great Lakes has a legal obligation to allow AT&T to avoid paying tariffed tandem switching and transport charges imposed by Iowa Network Services because Great Lakes is a CLEC that engages in access stimulation.²⁹ In that proceeding, Great Lakes argues that AT&T's claim would require a change in existing Commission policy and thus should not be granted by the Enforcement Bureau.³⁰ AT&T's Petition now seems to be designed to obtain a similar result through a different (albeit still inappropriate) means.

Finally, AT&T should have disclosed a third relevant matter, which involves its non-payment of tariffed access charges, and that has also been referred to the FCC. On August 4, 2016, the Third Circuit affirmed the District of New Jersey's decision to stay and refer *Iowa*

²⁸ *Connect America Fund Order*, ¶ 672, nn.1112 & 1113; see also *id.* at ¶ 692 & n.1167 (rejecting AT&T's proposal to "detariff competitive LEC access charges if they meet the access stimulation definition"). While AT&T admits that the Commission declined to detariff access charges for access stimulation traffic, it fails to meet the requirement that a complete petition for forbearance affirmatively acknowledge that where the petitioner has sought similar relief in proceedings before the Commission. See Petition at 17.

²⁹ *AT&T Corp. v. Great Lakes Communication Corp.*, EB-16-MD-001, AT&T Formal Complaint (Public Version), Count I (filed Aug. 16, 2016).

³⁰ *AT&T Corp. v. Great Lakes Communication Corp.*, EB-16-MD-001, Great Lakes Answer (Public Version), Response to Count I (Sept. 15, 2016).

Network Services, Inc. v. AT&T Corp., 3:14-cv-03439-PGS (D.N.J.).³¹ While the referral has not yet been effectuated through a formal complaint, that referral will ask the Enforcement Bureau to evaluate whether AT&T must pay the rates contained in Iowa Network Services' tariff for tandem switching and transport services provided by Iowa Network Services, now known as Aureon, to carry AT&T's customers' traffic to Great Lakes.³²

For these reasons, AT&T's Petition was not complete as filed and should be dismissed.

III. AS TO RATE-OF-RETURN REGULATED CEA PROVIDERS AND CLECS, AT&T'S PETITION SHOULD BE DENIED ON THE MERITS

AT&T has the burden of proof in all aspects of its Petition, including the burden of production and the burden of persuasion.³³ AT&T's Petition fails to meet its burden when applied to rate-of-return regulated CEA Providers and CLECs.

The Petition to detariff tandem switching and transport services for access stimulation traffic seems to flow from AT&T's entirely unsupported assertions that "transport charges not subject to transition are priced above cost, providing implicit subsidies to the charging carrier, to the detriment of the ratepayers of the purchasing carriers" and that "per-minute, per mile transport charges that have little rational relationship to their underlying cost."³⁴ These conclusions are simply false, however, when applied to rate-of-return carriers that have already incorporated the higher volumes of traffic in their rate projections, which would include the CEA Providers governed by Part 61.38 of the Commission's rules. These carriers have rates for

³¹ See *Iowa Network Services, Inc. v. AT&T Corp.*, Order, No. 15-4093 (3rd. Cir. Feb. 16, 2016).

³² See *Iowa Network Services, Inc. v. AT&T Corp.*, Memorandum Order (ECF No. 43) 3:14-cv-03439-PGS, (D.N.J. Oct. 14, 2015).

³³ *Forbearance Petition Procedural Order*, ¶¶ 20 - 21.

³⁴ Petition at 5.

tandem switching and transport that bear not just some “rational relationship to their underlying costs,” but are directly correlated to those costs.

Because the starting point for AT&T’s Petition is so fundamentally flawed when it is applied to rate-of-return CEA providers³⁵ whose rates have already incorporated the higher traffic volumes, AT&T fails to meet its burden with regard to any of the prongs that the Commission must consider in order to determine that forbearance is warranted. If AT&T Corp. is granted the relief that it seeks, it will have no affirmative obligation to pay CEA providers for tandem switching and transport services on high-volume traffic. The CEA provider, however, will not be able to block the traffic AT&T’s customers transmit, thus the CEA providers will be left holding the bag, while AT&T pads its bottom line. Moreover, AT&T’s unwillingness to pay for the services its customers consume will result in unjust and unreasonable discrimination among long-distance carriers and may ultimately have negative effects on customers through the country that seeks to terminate calls to areas served by CEA providers. In an era in which rural call competition has already plagued these rural areas, there is no reason to haphazardly allow AT&T to drain CEA providers of the resources necessary to operate their networks when AT&T offers no plan to allow these carriers to make up for the lost revenues that would result from AT&T’s proposed detariffing. The Commission should not proceed in such a piecemeal fashion.

Further, AT&T’s Petition should be denied with regard to CLECs. The Commission has already taken action to reduce the rates that CLECs charge on all access services, including tandem switching and transport services, by requiring CLECs that engage in access stimulation

³⁵ As noted above, unlike other ILECs which the Commission determined should no longer be classified as “dominant” with regard to the provision of switched access services, *see* Petition at n.4, CEA providers remain dominant carriers subject to the Commission’s strictest regulatory requirements. *See In re Technology Transitions*, 31 FCC Rcd. at n.43 (“non-dominant status does not extend to centralized equal access providers because such carriers do not provide service to end users”).

to benchmark their rates to the lowest price cap LEC in the state.³⁶ In so doing, the Commission has already acted to ensure just and reasonable rates for CLECs' tandem switching and transport services. The record offered by AT&T includes no new data since the Commission last rejected AT&T's proposal to detariff CLEC access charges for access stimulation in 2011. Therefore, without any new data, AT&T's Petition offers no reason for the Commission to revisit its conclusion in the *Connect America Fund Order* that the "benchmarking approach addresses access stimulation within the parameters of the existing access charge regulatory structure."³⁷

For these reasons, the Commission should deny the request for forbearance as applied to CEA providers and CLECs. The existing rules already set CEA provider tandem switching and transport rates based on the cost of providing services and CLECs that engage in access stimulation have already had their tandem switching and transport rates reduced to match the lowest price cap LEC in their state. AT&T has presented absolutely no evidence to support any change to these policies except the same flawed arguments that the Commission already carefully considered and rejected in the 2011 *Connect America Fund Order*.

CONCLUSION

The Commission should deny AT&T's Petition for Forbearance because: (1) AT&T lacks standing to seek the forbearance as a customer of the services; (2) AT&T's Petition was not complete as filed; and (3) AT&T has not met its burden of establishing that forbearance is warranted with regard to CEA providers and CLECs.

³⁶ See *Connect America Fund Order*, ¶¶ 688 – 91; see also 47 C.F.R. § 61.26(a)(3)(i) and (g) (requiring benchmarking for "interstate exchange access services" which is defined to include "tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching").

³⁷ See *id.* ¶ 692.

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